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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. It is the intent and purpose of the state of Tennessee to encourage owners and operators of facilities and persons conducting other activities regulated under Tennessee environmental laws, or the regional, federal or local counterpart or extension of such laws, to conduct voluntary internal environmental audits of their compliance programs or management systems, and to assess compliance with such statutes, thus furthering the protection and enhancement of the environment and general public welfare of the State of Tennessee. In order to promote this public policy and intent, an environmental audit privilege is established and recognized in accordance with the provisions of this act.

SECTION 2. As used in this act, unless the context clearly indicates otherwise:

() "Environmental audit" means a voluntary, comprehensive evaluation or review of (i) one or more regulated facilities, or an activity at one or more regulated facilities, to identify technical and/or legal issues relative to environmental compliance or permitting status and strategies, or (ii) the compliance programs or management systems related to a regulated facility or activity. An environmental audit may be conducted by the owner or operator of the regulated facility or activity, by the owner's or operator's officers, agents or employees, or by independent contractors. Such audit shall be a planned, scheduled event and shall be evidenced by written documentation. Once initiated, the environmental audit shall be completed within a reasonable period of time as determined under the facts and circumstances of the situation. Nothing in this section shall be

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construed to authorize continuous, uninterrupted environmental audits engaged in solely for the purpose of evading the requirements of this act.

() "Environmental audit report" means any document or documents or any excerpt thereof, existing either individually or as a compilation, prepared as a part of an environmental audit and labeled "environmental audit report" or with equivalent language. An environmental audit report may include, but is not limited to, field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically-recorded information, implementation plans identifying issues and strategies for corrective action, maps, charts, graphs and surveys, provided such supporting information is prepared or developed in the course of an environmental audit. The date of the final completed environmental audit report shall be stated on the report or be readily ascertainable. The following shall not be considered to be an environmental audit report for the purposes of this act:

(1) Documents, communications, data, reports or other information required to be collected, developed, maintained, reported or otherwise made available to a regulatory authority pursuant to Tennessee environmental laws, or other federal, state or local law, ordinance, regulation, permits, or order;

(2) Information or documents that are otherwise required to be made available by law or which are required for regulatory activity conducted by a

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regulatory authority and which are not prepared solely for an environmental audit.

Nothing in this act shall limit or restrict in any way documentation or reporting that is otherwise required pursuant to Tennessee environmental laws or which is required for regulatory activity conducted by a regulatory authority;

(3) Information obtained solely by observation, inspection, sampling or monitoring by any regulatory authority;

(4) Information obtained from a source independent of the environmental audit; and

(5) Documents created prior to the environmental audit.

() "Regulatory authority" means the Tennessee Department of Environment and Conservation, or other regulatory agency or political subdivision having responsibility to administer or to enforce Tennessee environmental laws or permits or the federal, regional or local counterpart or extension of such laws.

() "Regulated facility" means a facility or an activity conducted at such facility, that is regulated by Tennessee environmental laws, or local government ordinances, or the federal, regional or local counterpart or extension of such laws, or permits issued pursuant thereto.

() "Tennessee criminal environmental laws" means Tennessee Code Annotated, §§ 39-14-408, 68-201-112(a), 68-211-114, 68-212-114, 68-212-213, 68-215-120, 68-

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221-713(f), 69-3-115(b), or any other criminal laws now in effect or enacted after the effective date of this act applicable to environmental activities.

() "Tennessee environmental laws" means the Tennessee Water Quality Control Act, Tennessee Code Annotated § 69-3-101, et seq., the Tennessee Safe Drinking Water Act, Tennessee Code Annotated § 68-221-701, et seq., the Tennessee Air Quality Act, Tennessee Code Annotated § 68-201-101, et seq., the Tennessee Solid Waste Management Act of 1991, Tennessee Code Annotated § 68-211-801, et seq., the Tennessee Hazardous Waste Management Act of 1977, Tennessee Code Annotated § 68-212-101, et seq., the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated § 68-211-101, et seq., the Tennessee Hazardous Waste Management Act of 1983, Tennessee Code Annotated § 68-212-201, et seq., the Tennessee Hazardous Waste Reduction Act of 1990, Tennessee Code Annotated 68-212-301, et seq., the Tennessee Underground Storage Tank Act, Tennessee Code Annotated § 68-215-101, et seq., the Tennessee Sanitary Landfills Areas Act, Tennessee Code Annotated § 68-213-101, et seq., the Tennessee Insecticide, Fungicide, and Rodenticide Act, Tennessee Code Annotated § 43-8-101, et seq., the Aerial Application of Pesticides, Tennessee Code Annotated § 43-8-301, et seq., the Tennessee Application of Pesticides Act of 1978, Tennessee Code Annotated § 62-21-101, et seq., local government ordinances pertaining to environmental laws or activities, rules or

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ordinances issued pursuant to these acts, or any other laws now in effect or enacted after the effective date of this act applicable to environmental activities.

SECTION 3. An environmental audit report or any information contained therein shall be privileged provided the report or information contained therein is dated and labeled "environmental audit report" or with equivalent language and shall be immune from discovery and shall not be admissible as evidence or otherwise in any legal action in a civil, criminal or administrative proceeding, except as provided in Sections 4, 5 and 7 of this act. The privilege provided in this act shall be effective to prevent the discovery or use as evidence of any environmental audit report or information contained therein by any person, legal entity, the State of Tennessee or any government entity created under Tennessee law. This privilege shall be incorporated into the law applicable to privilege in Tennessee.

SECTION 4.

(a) The privilege described in Section 3 of this act does not apply if it is waived as described in this section by the person who is the owner or operator of a facility or activity at which an environmental audit was conducted. Waiver of the privilege occurs if:

(1) The party requesting the preparation of an environmental audit report by proper authority intentionally discloses, including without limitation voluntarily introduces into evidence, the environmental audit report, to another person or entity not bound to maintain it in confidence;

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(2) The party requesting the preparation of the environmental audit report produces, or authorizes the production of, the environmental audit report in response to a subpoena or in a discovery proceeding without objection or assertion of the privilege; or

(3)

(A) The environmental audit report, or any part of it, is fraudulently used, procured or obtained by a person:

- (i) To avoid criminal prosecution,
- (ii) To contest, defend or avoid criminal or civil liability, or
- (iii) To mitigate criminal sentencing and penalties.

(B) Fraudulent use shall include, but shall not be limited to, activity where an individual has knowledge of a violation of Tennessee environmental law or Tennessee criminal environmental law and, as a result of such knowledge, subsequently causes an environmental audit to be conducted to avoid criminal or civil sanctions resulting from that violation.

(b) If the privilege is waived pursuant to this act as to only a part or parts of the environmental audit report, such waiver shall apply only to that part or parts and not to the entire report.

SECTION 5.

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(a) In a civil, administrative or criminal proceeding, after an in camera review and hearing consistent with the Tennessee Rules of Civil Procedure, or the Tennessee Rules of Criminal Procedure in the case of a criminal proceeding, a court of record may require disclosure of material for which the privilege provided in this act is asserted, only if the court determines that:

(1) The privilege is asserted for a fraudulent purpose as outlined in Section 4(a)(3) of this act;

(2) The information contained in the environmental audit report demonstrates a clear, present, and impending danger to the public health or the environment in areas outside the property of the regulated facility; or

(3) Even if subject to the privilege provided in this act:

(A) the material shows evidence of noncompliance with Tennessee environmental laws, or with the federal, regional or local counterpart or extension of such laws; and

(B) the owner or operator of the regulated facility or activity has not promptly initiated appropriate actions to achieve compliance with such laws or to complete any necessary permit application; and

(C) as a result, the owner or operator of the regulated facility or activity did not or will not achieve compliance with the Tennessee environmental laws or with the federal, regional or local counterpart or

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extension of such laws, or complete the necessary permit application
within a reasonable amount of time.

For purposes of subdivision (3)(B) of this section only, the owner or
operator may demonstrate that appropriate efforts to achieve compliance were or
are being taken by means including, but not limited to, the implementation of a
phased schedule of actions to bring the regulated facility or activity into
compliance with all such Tennessee environmental laws or with the federal,
regional or local counterpart or extension of such laws.

(b) If, based solely upon information obtained from a source or sources
independent of an environmental audit report, a district attorney general has probable
cause to believe an offense has been committed under Tennessee criminal
environmental laws or the regional or local counterpart or extension of such laws, the
district attorney general may obtain an environmental audit report for which the privilege
is asserted under this act pursuant to a search warrant, criminal subpoena or discovery
as allowed by the Tennessee Rules of Criminal Procedure. The district attorney general
shall not review or disclose the contents of the environmental audit report, but shall
immediately place the report under seal with the appropriate court of record and provide
written notice to the person authorizing the preparation of the report, whether owner or
operator, that he has obtained the report and placed it under seal with the specified
court of record. Within thirty (30) days of the owner's or operator's receipt of the written

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notice, the owner or operator or the district attorney general may file with the appropriate court of record, a petition requesting an in camera hearing on whether the environmental audit report or portions thereof are privileged or subject to disclosure. Failure by the owner or operator to timely file such petition shall waive the privilege, provided no such petition has then been timely filed by the district attorney general which had obtained said report. Failure by the district attorney general to provide the written notice specified in this section shall preclude the district attorney general from filing a petition under this section.

(c) Within thirty (30) days of the filing of such a petition by the District Attorney or the owner or operator, the court shall issue an order scheduling an in camera hearing to determine whether the environmental audit report, or portions thereof, is privileged.

(d) The court may allow the report to be unsealed for the limited purpose of allowing the district attorney general to review the report and shall place appropriate limitations on distribution and review of the report to protect against unnecessary disclosure. The district attorney general may consult with enforcement agencies regarding the contents of the report as necessary to prepare for the in camera hearing. However, the information used in preparation for the in camera hearing shall not be used in any investigation or in any proceeding against the defendant or any other person, and shall otherwise be kept confidential, unless and until such information is found by the court to be subject to disclosure.

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(e) The parties may at any time stipulate to entry of an order determining that specific information contained in an environmental audit report is or is not subject to the privilege provided under this act.

(f) If, following the in camera hearing, the court should make a determination that the material is not privileged, the court shall compel the disclosure only of those portions of the environmental audit report relevant to issues in dispute in the proceeding. No portion of an environmental audit or environmental audit report shall be introduced following a determination by a court that such environmental audit report shall remain privileged.

(g) A party asserting the privilege provided in this act has the burden of proving that the materials claimed as privileged constitute an environmental audit report as defined in this act. A party seeking disclosure of the environmental audit or environmental audit report has the burden of proving the condition(s) for disclosure required by this act. A district attorney general seeking disclosure under this section of this act has the burden of proving the condition(s) for disclosure required by this act.

(h) A court of record that allows a party access to the environmental audit report under the provisions of this act shall limit such access to conditions necessary to protect the appropriate confidentiality of the report or any part of the report not required to be disclosed. A moving party who obtains access to any environmental audit report

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pursuant to this act shall not divulge any information from the report except as specifically allowed by the court.

(i) If any party to a civil, criminal or administrative proceeding for which an in-camera review or hearing proceeding described in this act divulges or disseminates all or any part of the information contained in an environmental audit report, for which disclosure has not been compelled by a court of record pursuant to the provisions of this act, then the disclosing party shall be subject to the remedies available to the aggrieved party under common law, including but not limited to, civil contempt.

SECTION 6. No person or entity conducting or preparing an environmental audit report or environmental audit may be examined as to the environmental audit or environmental audit report without the consent of the party authorizing the preparation of the report, whether owner or operator, or unless ordered to testify by a court of record. This limitation shall not prevent examination of any such person or entity as to knowledge obtained prior to the environmental audit or knowledge from a source or sources independent of the environmental audit. This section does not apply if the environmental audit as to which examination is sought is determined by a court of record to be subject to an exception allowing disclosure pursuant to the provisions of Sections 4 or 5 of this act. If ordered to testify by a court of record, the scope of examination shall only apply to those portions of the environmental audit or environmental audit report determined to be subject to disclosure. This section applies only to examinations made after the effective date of this act, and shall not circumvent, limit, waive or abrogate the

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scope or nature of any other statutory or common law privilege or immunity that may otherwise exempt a person from examination.

SECTION 7.

(a) If any owner, operator or its agent makes a written voluntary disclosure of an environmental compliance violation to the regulatory authority, then there is a rebuttable presumption that the disclosure is voluntary, and the person, persons and/or entity shall be immune from any state or local administrative and civil penalties associated with the violation disclosed unless said presumption is rebutted as provided in subsection (b) of this section.

(b)(1) To rebut the presumption that a disclosure is voluntary, the regulatory authority shall show to the satisfaction of an administrative tribunal or court of record presiding over the enforcement action that any of the following conditions exist:

(A) The disclosure was made in response to a final order issued to the owner or operator of the regulated facility related to the disclosure by a regulatory authority;

(B) The disclosure did not arise out of an environmental audit;

(C) The disclosure was made in more than thirty (30) days after knowledge of the violation was obtained and promptly verified by the owner or operator; or more than thirty (30) days after the date of the final environmental audit report;

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(D) The owner or operator for which the disclosure is made did not initiate the appropriate effort to achieve compliance, did not pursue compliance with reasonable diligence, or did not correct the noncompliance. If the noncompliance is not corrected within thirty (30) days of disclosure, the person or entity making the disclosure shall submit to the regulatory authority within said thirty (30) day period a plan establishing time frames for compliance. Such plan shall not provide for time frames that exceed twenty-four (24) months from the date of disclosure, provided, however, that time frames for correcting the noncompliance may at any time be extended by the regulatory authority if either the plan's time frames are not practicable or the noncompliance cannot be corrected with reasonable diligence within said twenty-four (24) month period. Where such evidence shows the noncompliance was a failure to obtain a permit, appropriate efforts to correct the noncompliance include the submittal of a complete permit application within a reasonable time, but in no event longer than six (6) months from the date of disclosure, unless submittal of a complete permit application is not practicable within said six (6) month period and an extension of time is approved by the regulatory authority;

(E) The owner or operator for which the disclosure is made has not cooperated with the regulatory authority regarding investigation of the violations identified in the disclosure; or

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(F) The disclosure was made for a fraudulent purpose as outlined in Section 4(a)(3) of this act.

(2) A decision by an administrative tribunal regarding the voluntary nature of the disclosure is final agency action.

(c) When an owner, operator or agent is charged with a Tennessee criminal environmental law violation, the owner, operator or agent shall have a complete defense with respect to that criminal charge if such defendant establishes all of the following:

(1) The owner, operator or agent made a written voluntary disclosure to the regulatory authority of the environmental compliance violation which is the basis of the criminal charge; and

(2) The disclosure was not made in response to a valid order issued to the owner or operator of the regulated facility related to the disclosure by a regulatory authority; and

(3) The disclosure arose out of an environmental audit; and

(4) The disclosure was made within thirty (30) days after knowledge of the violation was obtained and promptly verified by the owner or operator; but in no event shall the disclosure be made more than thirty (30) days after the date of the final environmental audit report; and

(5) The owner or operator for which the disclosure is made initiated the appropriate effort to achieve compliance, pursued compliance with

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reasonable diligence and corrected the noncompliance. Where such evidence shows that noncompliance was the failure to obtain a permit, appropriate efforts to correct the noncompliance include the submittal of a complete permit application within a reasonable time, but in no event longer than six (6) months, unless submittal of a complete permit application is not practicable within six (6) months and; provided, however, that should the court determine that any failure to correct the noncompliance or obtain a permit was due solely to the financial inability of the owner or operator, the court shall only consider the other requirements for establishing the defense under this subsection; and

(6) The owner or operator for which the disclosure is made has cooperated with the regulatory authority regarding investigation of the violations identified in the disclosure, as determined by the trier of fact.

Notwithstanding the defendant's establishment of the foregoing defense, the district attorney general can overcome the defense by proving beyond a reasonable doubt that the defendant knowingly and intentionally violated the Tennessee criminal environmental law which is the subject of the criminal charge.

(d) If an owner, operator or agent of a regulated facility has made a written voluntary disclosure of an environmental compliance violation to the regulatory authority and is subsequently convicted of a criminal charge arising out of that violation, the

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sentencing court shall consider all the following factors, in addition to any other relevant factors, in determining the appropriate sentence for that violation:

- (1) Timeliness of the disclosure;
 - (2) Any good faith efforts to comply with the applicable requirements of the Tennessee environmental laws;
 - (3) Economic impact of the penalty on the violator;
 - (4) Financial inability of the violator to achieve compliance;
 - (5) Any remedial actions taken relating to the disclosure;
 - (6) Timeliness of the initiation of appropriate actions to remedy the violations disclosed;
 - (7) Timeliness of achieving compliance with the Tennessee environmental laws with respect to the violation disclosed;
 - (8) Degree of the violator's culpability;
 - (9) Any economic benefit gained by the violator due to the violation;
- and
- (10) History of compliance with Tennessee environmental laws and Tennessee criminal environmental laws.

The above factors shall be considered in mitigation of the punishment allowed under the relevant Tennessee criminal environmental law, and the degree of mitigation

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shall be determined by the sentencing court (up to and including the suspension of sentence).

SECTION 8. No regulatory authority shall adopt any rule, regulation, guidance, policy or permit condition requiring disclosure of an environmental audit report that is privileged under this act.

SECTION 9. Nothing in this act is intended to, nor shall it circumvent, limit, waive or abrogate the scope or nature of any other statutory or common law privilege recognized in Tennessee.

SECTION 10. Nothing in this act shall be construed to abrogate the responsibility of any person or entity to comply with federal, state or local government reporting requirements, including notification of any situation or event which represents a substantial risk or injury to health or the environment.

SECTION 11. No later than March 1, 2000, the Department of Environment and Conservation in conjunction with the Attorney General's Office and the District Attorneys General Conference shall prepare and submit a report to the environment committees and the judiciary committees of both the House and Senate, that evaluates the impact of this legislation on environmental enforcement and compliance in Tennessee and includes any recommendations.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the

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act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect upon becoming law, the public welfare requiring it and the statutory provisions provided herein shall not apply to any environmental audit report dated prior to March 1, 1995.